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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,084	05/02/2002	Andrew Laitt	000026.00031	8099

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EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/980,084

Applicant(s)

LAITT, ANDREW

Examiner

Hemant M. Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-20, 22, 27 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20, 22, 27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8-20, 22, 27, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (2835596) and Davy (3199756) or Soubier (2194451), and further in view of European Application 0302413 ('413).

Kaufman discloses a method of packaging food-stuff (12, figs. 1-2) comprising the steps of forming a tube (10, figs. 1, 2-5) having a pre-determined cross-sectional shape and area (see col. 3, lines 34-38), forming a first seal (11, figs. 2-3) at a lower end of the tube, feeding a pre-determined amount of the food-stuff (see col. 3, lines 34-38) to be packaged into the tube, forming a second seal (16, figs. 2-3) in the tube at a pre-determined distance above the first seal (11) to form a sealed pouch of pre-determined dimensions and pre-determined volume containing the food-stuff, each pouch having at least one long side face which is as long as or longer than all other faces of the pouch (see figs. 1-4), and inserting the sealed pouches in a carton (19, fig. 5), wherein the bulk volume of the predetermined amount of foodstuff fed into each pouch is less than the pre-determined volume of each sealed pouch (see col. 3, lines 34-38), so that when each pouch is sealed, each pouch contains the desired quantity of food-stuff, as well as a pre-determined amount of air so that if a sealed pouch is placed

on the long side face (see figs. 3-4), a layer of air is formed above the foodstuff (see col. 2, lines 63-72; col. 3, lines 1-2).

Kaufman, as mentioned above discloses all the claimed limitations except for forming a strip of sealed pouches and inserting the strip into a carton. However, Davy or Soubier teaches to form a strip of sealed pouches (see figs. 4-5 of Davy and figs. 2 and 3 of Soubier) and inserting the strip into a carton (E, fig. 5 of Davy and fig. 3 of Soubier) so that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery (see col. 1, lines 20-27 of Davy and page 2, line 33-40). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strip of sealed pouches and inserting the strip into a carton as taught by Davy in the method of packaging food-stuff of Kaufman so that that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery.

The method of packaging foodstuff of Kaufman as modified by Davy or Soubier, as mentioned above, meets all the limitations of claim 1, except for forming brick shaped configuration. However, European Patent ('413) teaches to form the brick shaped container for better handling and mechanical strength of containers (see col. 8, lines 31+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the brick shaped container in the modified

method of packaging foodstuff of Kaufman as taught by European Patent ('413) for better handling and mechanical strength of containers.

Regarding claims 2-3, the modified method of Kaufman discloses that the strip of pouches is arranged substantially upright or transverse in the carton (see fig. 5).

Regarding claims 4-6, the modified method of Kaufman teaches to insert strip of pouches into a carton, but does not disclose expressly that at least two strips of sealed pouches should be arranged in a carton. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to arrange at least two strips of sealed pouches in a carton because Applicant has not disclosed that by arranging two strips of sealed pouches in a the carton provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the way Kaufman discloses to insert the strip of pouches into a carton because both arrangements would perform equally well as far as the packaging of the sealed strip of pouches in the carton is concerned. Therefore, it would have been an obvious matter of design choice to modify Kaufman to obtain the invention specified in claims 4-6.

Regarding claim 8, the modified method of Kaufman teaches to form the brick shaped container by forming pleat by the molding jaws (20a, fig. 1).

Regarding claim 9, Kaufman discloses that the pouches are substantially the same size.

Regarding claims 10-11, the modified method of Kaufman teaches to form the cuboidal shape container.

Regarding claims 12-13, Kaufman discloses that the sealing is by means of heat (see col. 3, lines 28-32).

Regarding claim 14, Kaufman discloses that the tube is formed of plastic material (see col. 3, lines 24-26).

Regarding claim 15, Kaufman discloses plastic tube material. Kaufman does not disclose expressly the waxed paper. However, it is obvious to one having ordinary skill in the art at the time the invention was made to use the plastic or waxed paper for their use in packaging the foodstuff to make the package moisture resistant. Applicant did not seasonally challenge the holding of Official Notice of use of waxed paper, and therefore the limitation in the claim is now deemed Admitted Prior Art.

Claims 17-20, Soubier teaches a line of perforations formed between each pouch of the strip of the pouches (26, fig. 1) to form a weakened line to sever the packages easily along this weakened line (see page 2, lines 3-10). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the line of perforations formed between each pouch of the strips of the pouch as taught by Soubier in the strip of pouches of Kaufman as modified by Davy to separate the packages easily from the remainder of the strip.

Regarding claim 22, the packaged brittle foodstuff produced by the method.

Regarding claim 27, Soubier teaches that the strip of filled pouches is folded at points between the pouches (see fig. 2) to insert the strip in the box in zigzag pattern.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the method of packaging food-stuff of Kaufman to fold the strip of filled pouches at points between the pouches to insert the strip in the box in the zigzag pattern.

Regarding claim 30, Davy teaches that the foodstuff comprises flakey or granular substance (see col. 2, lines 30+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to fill the containers in the modified method of Kaufman of packaging food-stuff with cereal.

Regarding claim 31, Kaufman discloses the step of determining the predetermined volume of food-stuff, determining the predetermined volume of the sealed pouches, so that the predetermined volume of the sealed pouches is greater than the predetermined volume of food-stuff and so that, when the pouch is placed on its side, a layer of air is formed above the food-stuff determining the predetermined shape and the predetermined distance between the first and second seal from said predetermined volume (see col. 3, lines 25-38, figs. 3-5).

Regarding claim 32, Soubier teaches that the carton has an opening face and a bottom face opposite the opening face (see fig. 3) and an axis extending from the bottom face to the opening face, the strip of sealed pouches is being arranged substantially transverse to the axis in the carton and arranged in a concertina configuration so that one or more of the individual packages may be severed from the string (see page 2, lines 35+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strip of sealed

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pouches arranged substantially transverse to the axis in the carton and in a concertina configuration so that one or more of the individual packages may be severed from the string.

Regarding claim 33, the modified method of packaging foodstuff of Kaufman, as mentioned above, meets all the limitations of claim 33.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-6, 8-20, 22, 27, 30-33 has been considered but are moot in view of the new ground(s) of rejection.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hemant M. Desai*

HMD